

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

THOMAS STEPHANIE
Claimant

APPEAL NO. 11A-UI-11749-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 07/24/11
Claimant: Appellant (1)**

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Thomas Stephanie (claimant) appealed an unemployment insurance decision dated August 31, 2011, reference 01, which held that he was not eligible for unemployment insurance benefits because he is not able to perform work with Tyson (employer) due to a medical injury. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 30, 2011. The claimant participated in the hearing. The employer participated through Kris Travis, employment manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a full-time maintenance mechanic on August 3, 2010. His last day of work was July 16, 2011 and he went on a non-work-related medical leave of absence effective July 20, 2011. The claimant has not been released to return to work without restrictions. His formal leave of absence expired on September 13, 2011, but the employer is working with him and he is now on an open-ended leave of absence.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38,

paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). Inasmuch as the illness was not work-related and the treating physician has not released the claimant to return to work without restrictions, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work. Benefits shall be withheld effective July 24, 2011.

DECISION:

The unemployment insurance decision dated August 31, 2011, reference 01, is affirmed. The claimant does not qualify for unemployment insurance benefits as of July 24, 2011.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw